STATE OF MICHIGAN

COURT OF APPEALS

THOMAS M. PROSE,

Plaintiff-Appellant,

v

MARGARET "PEGGY" CLOUGH, in official capacity for Glennbrook Beach Association, GLENNBROOK BEACH ASSOCIATION, JOSEPH KELLY, in official capacity for Glennbrook Beach Association, MARGARET "PEGGY" CLOUGH, in official capacity for Dexter Township, PATRICIA KELLY, in official capacity for Dexter Township, TOWNSHIP OF DEXTER, WASHTENAW COUNTY BOARD OF COMMISSIONERS/CHAIRMAN, COUNTY OF WASHTENAW, and WASHTENAW COUNTY ADMINISTRATOR,

Defendants-Appellees.

UNPUBLISHED
June 10, 2014

No. 315293
Washtenaw Circuit Court
LC No. 12-000962-CZ

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Plaintiff, Thomas Prose, appeals as of right the trial court's order that granted defendants, Dexter Township, Margaret Clough and Patricia Kelly, in their official capacities for Dexter Township, Washtenaw County, Chairman of the Washtenaw County Board of Commissioners, and Washtenaw County Administrator, summary disposition pursuant to MCR 2.116(C)(10) (genuine issue of material fact) and dismissed plaintiffs' claim, with prejudice, against all defendants.[1] We affirm.

Glennbrook Beach Association is a homeowners association, founded and incorporated under the Summer Resort Owners Corporation Act, MCL 455.201 *et seq*, and is located in

[1] By stipulation of the parties, Washtenaw County, Chairman of the Washtenaw County Board of Commissioners, and Washtenaw County Administrator are not participating in this appeal.

Dexter Township. Plaintiff owns residential property that is within the territory of Glennbrook. In 2000, he sought permission from the township to demolish the existing cottage on the property and construct a new one. The township denied his request in 2006. Plaintiff appealed to the circuit court, but the case was closed in 2007, for reasons not explained in the record. Plaintiff asserts that he did not receive notice of such action until 2012. Plaintiff commenced this action against defendants in circuit court seeking declaratory relief to determine which governmental entity had zoning powers over his land, a writ of prohibition to prevent defendants from continuing to exceed the bounds of their offices, a writ of mandamus against Clough and the Kellys to cease their efforts to prevent plaintiff's exercise of his property rights, and an order for superintending control over the township's zoning board of appeals to prevent it from asserting jurisdiction over plaintiff's property. Plaintiff alleged that the township did not have authority to exercise zoning powers over territory incorporated by Glennbrook.

All defendants, excluding Glennbrook and Clough and Joseph Kelly, in their official capacities for Glennbrook, moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the township has jurisdiction and authority to zone property located within Glennbrook's territory pursuant to the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq*.

Plaintiff opposed the motion, arguing that the Township Rural Zoning Act, MCL 127.271, which was repealed by the MZEA, controlled because it was in effect when he submitted his application to the township in 2000. Under the Township Rural Zoning Act, plaintiff argued that Glennbrook was considered an incorporated portion of the township, and thus, it was exempt from the township's authority to zone. The trial court, however, agreed with defendants, and ultimately dismissed plaintiff's complaint against all defendants, with prejudice.

On appeal, plaintiff argues that the trial court erred by determining that the township could exercise zoning powers over territory incorporated by Glennbrook. We review de novo a trial court's decision on a motion for summary disposition. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). We also review questions of statutory interpretation de novo, and discerns the legislative intent by focusing on the plain language of the statute. *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 60; 718 NW2d 784 (2006).

Plaintiff correctly states that the MZEA did not affect any pending litigation or appeal that existed before June 30, 2006, see MCL 125.3702(2), but incorrectly argues that because he submitted his application to the zoning board before that date, the Township Rural Zoning Act applies. There is no evidence that plaintiff has pending litigation that existed before June 30, 2006. Although plaintiff filed an application in 2000 to make improvements to his property, that application was denied by the township in May 2006. Plaintiff did appeal to the circuit court on

June 29, 2006, but after remanding to make a record, the appeal was closed in 2007, and plaintiff did not take any further action.[2] Therefore, the MZEA applies.

The MZEA grants a local unit of government the power to zone property within its zoning jurisdiction. MCL 125.3201(1). A "local unit of government" means "a county, township, city, or village." MCL 125.3102(*o*). "Zoning jurisdiction" means "the area encompassed by the legal boundaries of a city or village or the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to a township zoning ordinance." MCL 125.3102(w). Accordingly, by the plain language of the statute, a township may exercise zoning powers over the areas within its legal boundaries, except over incorporated cities and villages. Thus, the question is whether a summer resort owners association is an incorporated city or village under the MZEA. We hold that it is not.

The Legislature enacted the Summer Resort Owners Corporation Act with the intent "to provide benefits for all freeholders in the particular summer resort area." *Baldwin v North Shore Estates Ass'n*, 384 Mich 42, 52; 179 NW2d 398 (1970). The Act specifically states that it is "an act to authorize the formation of *corporations*," which would "possess all the general powers and privileges" and would be "*subject to* all the liabilities of a municipal corporation." 1929 PA 137; MCL 455.201; MCL 455.204 (emphasis added). The statute does not state that a summer resort owners association becomes an incorporated city or village. Rather, it is a corporation that possesses many quasi-governmental characteristics. *Baldwin*, 384 Mich at 52.

Plaintiff cites this Court's opinion in *American Family Homes, Inc v Glennbrook Beach Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued May 28, 2013 (Docket Nos. 301489, 302331, 302780), for the proposition that Glennbrook is a municipal corporation, which exempts it from the township's zoning authority. Not only is this unpublished opinion not precedentially binding on this Court, MCR 7.215(C)(1), but it is not on point. Although that case defined a "municipal corporation" as "a city, village, or township," *American Family Homes, Inc*, unpub op at 9, that definition was from the governmental immunity statute and only applied to that statute. Additionally, the Court never held that Glennbrook was in fact a municipal corporation, or even an incorporated city or village for that matter; rather, it stated, as we have determined here, that it was "*subject to* the all of the liabilities of a municipal corporation." *Id.* (emphasis added).

Accordingly, pursuant to the MZEA, the township may exercise its zoning authority over the territory incorporated by Glennbrook, because it is not an incorporated city or village, and it is within the township's legal boundaries. Therefore, the trial court did not err by granting summary disposition to defendants and dismissing plaintiff's complaint.

[2] Plaintiff does not provide a reason why the action was closed. He merely asserts that he did not receive notice that the action was closed until 2012. Notably, plaintiff does not state whether he even inquired about the action in those five years.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Cynthia Diane Stephens